

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

RFA.No. 124 of 2007()

OS.5/2002 of II ADDL. DISTRICT COURT, KOLLAM
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APPELLANTS/DEFENDANTS 1 AND 5

1. SIDHANAR SERVICE EDUCATIONAL TRUST,
REG.NO.Q 101/79, SOORANADU NADUVILE MURI,
ANAYADI P.O., REPRESENTED BY ITS SECRETARY.
2. K.KOCHUKUNJU, THADAVLLA VEEDU,
KILIKOLLOOR, KOLLAM, SECRETARY SICHANAR SERVICE
EDUCATIONAL TRUST, REG.NO.Q.101/79,
SOORANAD NADUVILE MURI, ANAYADI P.O.

BY ADV. SRI.VINOY VARGHESE KALLUMOOTTILL

RESPONDENTS: PLAINTIFFS & DEFENDANTS 2 AND 4 TO 7

1. T.K.SUMATHY KUTTY,
S/O.KRISHNA SASTHRY, THATTACHERY,
SOORANAD THEKKEMURI, SOORANDU NORTH P.O.,
SASTHAMCOTTA TALUK.
2. M.C.SATHYAPALAN,
CHAIRMAN OF SIDHANAR SERVICE
EDUCATIONAL TRUST, CHERUSSERIL VEEDU,
MUTHUPILAKKADU, PORUVAZHI P.O.,
SASTHAMCOTTA.
3. M.N.RAGHAVAN, MOOZHAKKIZHAKKATHIL,
PADANAYARKULANGARA SOUTH, KARUNAGAPPALLY P.O.
4. G.THANKAPPAN, KAROOR VEEDU,
ERUMPAMANGAD P.O.
5. KALLADA NARAYANAN, KANICHAMTHUNDIL HOUSE
CHITTUMALA, KALLADA EAST PO.

RFA.No. 124 of 2007()

6. C.KARUTUAKUNJU, CHERUKUNNIL VEEDU,
VENMANY THAZHAM, VENMANY P.O.

BY ADV. SRI.PIRAPPANCODE V.S.SUDHIR
SRI.V.VARGHESE
SRI.P.GOPALAKRISHNAN NAIR
SRI.E.N.VISHNU NAMBOODIRI

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 04/12/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K.PADMANABHAN NAIR, J.

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R.F.A.No.124 of 2007-A
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Dated this the 4th day of December, 2007

J U D G M E N T

The defendants 1 and 5 in O.S.No.5/2002 on the file of the II Additional District Court, Kollam, are the appellants. The appeal is filed against a decree and judgment passed by the trial court, by which the court below has passed a preliminary decree for removing a trustee, appointing a receiver and also for other reliefs for the proper management of the first defendant trust.

2. The short facts necessary for disposal of the appeal are as follows:-

The first defendant-appellant is a Society, registered under the provisions of the Travancore - Cochin Literary, Scientific and Charitable Societies Registration Act, 1955, [Act XII of 1955]. The name of the Society is Sidhanar Service Educational Trust. The first respondent-applicant claiming that she is a member of the Society filed an Original Petition under Section 25 of the Act XII of 1955 for removing the governing body of the trust and to appoint

an administrator or receiver for the smooth working of the trust, call for the records of the first respondent trust including account books and audit the same and to realise the unlawful loss suffered by the trust from the persons responsible for the same and to give proper orders to revive the working of the trust or in the alternative to dissolve the trust if it is found impossible to carry on its functioning in accordance with the provisions of Act XII of 1955.

3. It was averred that the second respondent was elected as the Chairman and the sixth respondent as the Secretary of the trust in the year 1979 and all other members were included in the managing board. It was also averred that the first appellant Trust is running a school and the sixth respondent is the Manager of that school. It is also averred that the appellant sold the landed properties to the Society. Society paid only part of the sale consideration and undertook to pay the balance of sale consideration in due course. The balance was not paid. Hence, the plaintiff filed the suit for recovery of balance of sale consideration. It was also averred that the respondents were not maintaining the accounts properly. The first respondent-plaintiff was not even invited to attend meetings. It was also averred that there is no

chance for reconstituting the managing board among the existing members of the trust. The respondents 1 to 5 and 7 in the original petition filed a counter contending that the original petition was maintainable. It is averred that the plaintiff is not a member of the trust and she is not entitled to file a petition under Section 25 of the Act. It was contended that the trust could not work due to the maladministration of the then Secretary. A meeting was convened on 28/01/1996 and the sixth respondent was removed from the post of Secretary. It was also contended that the governing body decided to admit new members to take further actions. The averment that the first appellant is running a school is admitted. It was contended that after removing the sixth respondent, the third respondent was elected as the manager and he was acting as the manager. It was contended that no grounds were made out to reconstitute the board. The present board is the duly constituted board and they are discharging their duties properly. So they prayed a dismissal of the original petition.

4. It is seen that initially on 12/03/1997, the trial court heard the question of maintainability and, posted the Original Petition for orders to 19/03/1997. On 19/03/1997, the trial court took a view

that the question of maintainability is to be considered along with other points arising for consideration in the original petition. So, without rendering any decision on the question of maintainability, the original petition was adjourned for considering the question of maintainability and other contentions. Thereafter, the original petition was posted for evidence on a number of occasions. On 19/09/2002, the court below suo motu passed the following order:-

“Number as Original Suit being contentious for evidence.”

Accordingly the original petition was filed as O.S No.5/2002. Thereafter the suit was posted for evidence. This procedure adopted by the trial court is without jurisdiction and per se illegal. The application is filed under Section 25 of the Act. Section 25 reads as follows:-

25. Application to court for dissolution, framing a scheme, etc.:-

(1) When an application is made by the State Government or ten per cent of the members on the rolls of a society to the District Court within the jurisdiction of which the society is registered, the court may, after enquiry and on being satisfied that it is just and equitable, pass any of the following orders:-

- (a) removing the existing governing body and appointing a fresh governing body; or
 - (b) framing a scheme for the better and efficient management of the society; or
 - (c) dissolving the society.
- (2) Where the application under sub-section (1) is by the members of the society, the applicant shall deposit in court along with the application the sum of one hundred rupees in cash as security for costs.

5. When the district court passes an order under Section 25 of the Act, that order is subject to appeal as provided under Section 27 of the Act. Section 27 of the Act reads as follows:-

27. Appeals against orders under section 25.-- Appeals shall lie to the High Court from orders passed under Section 25 as if they were decrees in suits and shall be presented within the time prescribed thereof.

6. There is no provision in Act XII of 1955 which confers power on the District Court to convert an Original Petition as a suit. It would appear that the court below was carried away by the fact that the first appellant is named as a Trust. Ext.A1 is the bye-law

of the first appellant Trust. It shows that it is a Society constituted under the provisions of Act XII of 1955. It is true that the Society was named as Sidhanar Service Educational Trust. But the mere use of the word 'Trust' will not change the character of the Society. The first respondent filed an Original Petition. When an Original Petition is filed, as provided under Section 25, the Court has to consider whether the petitioner is entitled to any one or all of the reliefs provided under that Section. If it is filed as a suit the court will have to follow the procedure prescribed under Section 92 of the Civil Procedure Code. The first respondent never wanted to convert the Original Petition as a Suit. The court below has not complied with the provision of Section 92 of the C.P.C also. The trial court acted without jurisdiction in converting the original petition as an original suit that too without assigning any valid reasons. The order passed is a blank order. As I have already stated, there is no provision in the Act XII of 1955 which enables the District Court to convert a contentious Original Petition filed under Section 25 of the Act as a suit. So the entire proceedings in the court below converting the Original Petition as Suit and thereafter are without jurisdiction. So, I have no other action other but to set aside the decree and judgment passed by the trial

court and to direct the trial court to try and dispose of the proceedings as an original petition filed under Section 25 of the Act afresh, in accordance with law, as expeditiously as possible.

In the result, the appeal is allowed. The preliminary decree and judgment passed by the court below in O.S. No.5/2002 is hereby set aside. The order passed by the court below, passed on 19/09/2002, converting O.P.No.46 of 1996 as O.S.No.5/2002 is also set aside and the case is remitted to the district court. The district court is directed to take back the proceedings to file as O.P.No.46/1996, an original petition under Section 25 of the Act XII of 1955 and dispose of the same afresh, in accordance with law, as expeditiously as possible, at any rate, within three months from the date of receipt of a copy of the judgment. The parties shall appear before the court below on 14/01/2008.

K.PADMANABHAN NAIR,
Judge

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